contains one sealed cover -

Preserve

App F IX 4

Previous References

1933:34
(Rl)

File No 44-33
Serial Nos. 28, 29

Later References
Secr Dept Conf (35-33(1934))
Rl 44-33(34 & 38)

GENERAL AND REVENUE SECRETARIAT.

Serial Nos 2

Part B for April 1934

SUBJECT.

Eligibility of Sri Belur Srinivasa Iyengar Advocate who has been suspended from legal practice for one year to continue as Honorary Councillor, Bangalore City - Intimation of -

No. L:7633 dt 20.4.34

To The Hon. Dr. B. G. Jt. Sub. Cl. Bangalore

Stated that that Sri Belur Srinivasa Iyengar office as Sub Councillor, has under the law, be deemed to have become Vacant.

SL 23.4.34

B. K GARUDACHAR
Hon President,
BANGALORE CITY MUNICIPALITY

Telephone No 319

5265-P/33

BANGALORE,

Dated 22nd March 193-

£4843

wl 44-33-20

[App F III—2

Confidential

[illegible] Bangalore,

Mr. Belur Srinivasiengar, B. A., B.L., one of the Councillors of Bangalore City Municipal Council has been suspended from practice for one year by the High Court of Mysore under Legal Practitioner's Act. As he is suspended for a limited period, I feel doubt that Clause IV Section 12 of City Municipal Regulation ~~is~~ to be applied which is. A line in reply on the point will oblige.

Yours sincerely,

Law Secy for a note - 7 May
Fit
28/3/34

Under sec (12)(2) read with cl (iv) of sec 12 (1) (A)(a) of the City Municipalities Regulation, 1933 a legal practitioner who is a Councillor becomes disqualified if his sanad has been withdrawn by the High Court. The Legal Practitioners Regulation does not expressly provide for any withdrawal of a sanad. What is contemplated in sec 13 B of the Legal Practitioners Regulation is Suspension or Dismissal of a legal practitioner. If he is suspended, then sec 20 requires a note of it to be made in roll kept in the High Court, and if he is dismissed sec 21

NOTE—Contd sheet

WD 0134—GPB—15 000—12-10-33

✓

2 — 5 55

File No | of 193 | General and Reven Secretariat

Serial No

provides for the removal of the name of the dismissed practitioner from ~~the~~ Such Roll -

The Sanad referred to in sec 12 of the Municipal Regulation has therefore to be interpreted to mean the right permission to practice implied in the act of enrollment. Withdrawal of a Sanad is therefore withdrawal of such permission, and this may be either temporary as in case of Suspensions or permanent as in case of dismissals. In both cases therefore there is withdrawal of Sanad.

It therefore follows that Mr. Balu Srinivasa Iyengar has ~~to~~ become disabled from continuing to be a Councillor & his seat has become vacant under the law, as a consequence of the High Court decision - The disqualification continues for a period of 3 years from the date of withdrawal, but may cease earlier if an order of Govt is passed for this purpose under sec 12 (1) proviso (a) of the City Mcp Regn.

Chief Secy

RDY 28/3/34

RDY 28/3/34

Member

OFFICE OF THE SECOND MEMBER OF COUNCIL. 28 MAR 1934 No. 1257

The G.A may ~~RDY~~ also be consulted as this is an impt matter.

RDY 29/3

Serial No

Forwarded with compliments to the Govt advocate for favour of opinion.

Sd/- [illegible]
29 3 34

331
Law

No 128/33-34
Dt. 6.4.1934

Returned with compliments.

This case involves a point of some nicety. Section 12 (1) (A) (a) (4) of the City Municipalities Regulation reads as follows.-

> "No person may be a Councillor who was a legal practitioner whose Sannad has been withdrawn by the High Court".

Some difficulty has been caused in the construction of this sub-section because the wording in this clause is not identical with that in the Legal Practitioners' Regulation. Section 13 (b) thereof is worded as follows.-

> "The Chief Court may also after such enquiries as it thinks fit suspend or dismiss any legal practitioner enrolled as aforesaid".

Section 20 says that a note of suspension of any legal practitioner shall be made in the roll of legal practitioners to be kept in the Chief Court and notice thereof shall be sent to all courts subordinate thereto.

Section 21 which relates to dismissal reads as follows.-

> "The name of any legal practitioner dismissed under the foregoing previsions shall be struck off the roll of legal practitioners in the Chief Court and notice thereof shall be sent to all Courts subordinate thereto".

The Legal Practitioner's Regulation does not contain the word 'withdrawal'. The words used in

WD 0434—GPb—10 000—12 10-38

the

Serial No

the Municipalities Regulation seem to have been copied from the old Bombay Act. That a 'dismissal' of a Legal Practitioner amounts to a 'withdrawal' of his Sannad is clear as the meaning of the word 'withdraw' according to well recognised Dictioneries is 'to take back', 'to recall' or 'to resume' so that if a practitioner is dismissed, his sannad must be deemed to have been withdrawn or resumed or taken back by the authorities who granted it as he thereafter ceases to be a Legal Practitioner. But in the case of a suspension he is only prevented from exercising his privileges as a Practitioner for a time, and he automatically becomes entitled to resume his practice on the expiry of the period of suspension without any act on his part to get the sannad back again. If the party can exercise his privileges after the period of his suspension without any act of his own or without any re-grant from the High Court it may be said that there has been no withdrawal of his sannad. C.F. Cyclopaedia of Law and Procedure, Vol. 40, page 2125, and Vo. 37, pages 648 and 649, where the expressions withdraw and suspend are considered. The expression 'suspension' means 'temporary cessation', 'a temporal that is temporary stopx of a man's right'. A suspension therefore only prevents a man from exercising his right or prdvilege for a particular period, xxxxxxxxxxxx and he can exercise it after the expiry of that period without any further act of his. The wording in the Regulation viz. any person who was a legal practitioner and whose sannad

is

Serial No

is withdrawn indicates that it refers only to a person who has ceased to be a Legal Practitioner because of the withdrawal of his sannad. The word 'was' is significant. I therefore think that an order of suspension cannot be construed to amount to a withdrawal of the Sannad.

That an order of suspension is not meant to have the effect of disqualifying a person from being a Councillor can be gathered by way of analogy from sub clause (3) of section 12 (1) (A) (a) according to which, a person who has been dismissed from municipal District Board or Government service becomes disqualified from being a Councillor. A suspension in his case will not have this effect and it is not likely that a more rigid rule was intended to be laid down in the case a legal practitioner.

* * * * *

But when it existed in the Bombay Act, it included both suspensions as well as dismissals. Vide sec 26 of the Legal Practitioners Act XVIII of 1879 of British India which make it obligatory for the legal practitioner to surrender the certificate whenever he is suspended or dismissed)

It is also significant to notice that a similar provision which existed in the Bombay Act has since been abrogated. See Cumming's Bombay District Municipalities Manual, page 46. This shows the progressive tendency in this direction.

The question is not free from difficulty, but as such penal provisions ought to be construed very strictly and always in favour of the subject, I am inclined to the view that section 12 does not disentitle Mr. Belur Srinivasa Iyengar from continuing as a councillor.

7-4-34

H.-

Government Advocate.
6.4.1934.

NOTE—Contn Sheet

WD 0434—GPB—15 000—12-10-33

b 6 Sr/p

File No of 193 267 General Secr

Serial No

Second Member
thro' Chief Secy) Cant.
6 4 34
1889
7 4 34

331
Law

Maybe discussed at Tuesday's meeting of Cl— if the Dewan approves The case is one of some difficulty

J/07
9/4

Dewan. RR 9/4/34

Can Govt called upon to take action in matter at all. Why in not just keep quiet? MJ 9-4-34
May be pursued at Ootacamund meeting

Cmg
RR
9/4/34

For Disposal at next Meeting)

No C.262

1933/34

GENERAL AND REVENUE SECRETARIAT.

Council Matter.

Subject

(clause of the schedule)

Eligibility of Mr. Belur Srinivasa Iyengar, Advocate, who has been suspended from legal practice for one year, to continue as Municipal Councillor, Bangalore City Municipality.

Circulated to the Members of Council.

By Order,

R-R

Chief Secretary to Government

9th April 1934

First Member of Council

Second Member of Council

L6543

General and Revenue Secretariat | Rel File No 64 of 1933 | [App F III—2

Serial No	
	Pages 8 to 12 of the notes have been placed in the accompanying sealed cover
—	— — The approved draft in the file - Mayurma - today
29	Issued work 7633 of 20/4/34 to Parsient as well Bangalore. Replied him in the affirmative

App 20/4

B/ 22 20/4

NOTE—Contn Sheet

WD 0434—GPB—15 000—12 10-33

File No of 193

Serial No

Appendix F-Gen-1]

SUBJECT

Section Ml
File No 44-33
Serial No 29

Diary No of letter replied to

No L 7633

To The President-
Bangalore City M'C'L,

General and Revenue Secretariat
( )
the *193*

Sir,

With reference to your D O
letter of 28th March 1934 Soliciting
orders of Govt on the question whether
a vacancy has occurred under
Sec 12 of the City Municipal Regulation
on account of ~~orders of the Corporation~~ the order of the 19th.
~~from practice~~ Court Suspending Mr
Belur Srinivasa Iyengar from practice,
I am directed to state that Govt
consider that the Suspension ordered
amounts to a withdrawal of the
permission to practice, though it may
be for a prescribed term. As such,
Mr. Belur Srinivasa Iyengar's ~~term~~

Date of issue 2/4/34

Signed by Mr A S Rao

List of enclosures

Copied by

Examined by

WD 71—GBPM—40 000—20-7 31

Decease municipal Councillor
Kinet, under the law, be deemed
to have become vacant.

I have etc

RSG 16/4
Chief Secy to Govt

RSG
16/4/34

GOVERNMENT OF HIS HIGHNESS THE MAHARAJA OF MYSORE

General and Revenue Secretariat

Dated, Bangalore, ~~20th April 1934~~

No. L 7633 / 2-C 44-33-25

From

The *Chief Secretary to the Government of His Highness the Maharaja of Mysore*

To

The President,
Bangalore City Municipal Council, Bangalore.

Sir,

With reference to your D. O. letter of 28th March 1934 soliciting orders of Government on the question whether a vacancy has occurred under Section 12 of the City Municipalities Regulation on account of the order of the High Court suspending Mr.Belur Srinivasa Iyengar from practice, I am directed to state that Mr.Belur Srinivasa Iyengar's Office as Municipal Councillor must, under the law, be deemed to have become vacant.

I have the honor to be,

Sir,

Your most obedient servant,

Chief Secretary to Government.

B.K.M.2

5418/33

OFFICE OF THE GOVERNMENT ADVOCATE
IN MYSORE,

Bangalore, 5th April 1934. *193*

FROM

A R NAGESVARA IYER, ESQ, BA, BL,
GOVERNMENT ADVOCATE IN MYSORE,
BANGALORE

To

The General Secretary to the Govt.
of H. H. the Maharaja of Mysore,
Bangalore

SIR,

In continuation of this office letter No. 625 dated the 27th March 1934, I have the honor to forward herewith, for the information of Government, a copy of the order passed in Civil Petition No. 9 of 1933-34 on the file of the High Court of Mysore, (Proceedings against Mr. Belur Srinivasa Iyengar, Advocate, under the Mysore Legal Practitioners' Regulation).

I have the honor to be,
Sir,
Your most obedient servant,
A R Nageswara Iyer
Government Advocate.

IN THE HIGH COURT OF MYSORE AT MANGALORE

Tuesday the 27th day of March 1934.

PRESENT

RAJADHARMAPRAVINA

P. VENKATAVAYYA, CHIEF JUSTICE

and

MR. JUSTICE K. SHANKARANARAYANA RAO.

CIVIL PETITION NO.9 OF 1933-34.

In the matter of the remarks made against the Advocate Mr. Belur Srinivasa Iyengar in Miscellaneous Appeal No.28 of 1932-33 on the file of this Court (Re: filing of the Award in Miscellaneous Case No.91 of 1929-30/O.S.No.22 of 1928-29 on the file of the Additional District Judge of Bangalore).

Notice was ~~given~~ issued by this Court on 20th/21nd August 1933 to Mr.Belur Srinivasa Iyengar, requiring him to show cause why he should not be dealt with under Section 11(b) of the Mysore Legal -- Practitioners' Regulation 1934 as amended by Regulations I of 1897, XII of 1919 and X of 1928, for fraudulent or grossly improper conduct on his part in the discharge of his professional duty, as -- observed in paras 55 to 59 (both inclusive) of the order in the above Miscellaneous Appeal.

This

This case coming on for hearing on Monday, the 19th day of February 1934, and after hearing the arguments of Mr. A.N.Nageswara Iyer, Government Advocate for Government, Mr. M. Krishna Murthy, an Advocate on behalf of Mr. Belur Srinivasa Iyengar, having retired from the case for want of instructions, and after perusing the applications filed by Mr. C. Seshachar on behalf of the said Mr.Belur Srinivasa Iyengar, tendering an apology and ~~praying~~ praying that the proceedings against him may be dropped, the Chief Justice pronounced the following:-

O R D E R.

KVH/10.

C.A.No.9 of 1933-34.

3

O R D E R.

In Miscellaneous Case No.91 of 1929-30 on the file of the Additional District Judge, Bangalore, Mr. Belur Srinivasa Iyengar figured as a petitioner in the case. He filed an application, claiming to be an Arbitrator in the case, under Section 11 clause (2) of the Arbitration Regulation of 1917, and praying that the Award may be filed in Court. In the said application dated 25-1-1930, it was alleged that he had been -- appointed as an Arbitrator in accordance with an agreement between the parties and that he had -- proceeded according to law and passed an Award on 19-11-1929. The 1st opponent in the above Miscellaneous Case was Mr.Belur Srinivasa Iyengar's own client and the 2nd opponent was the latter's opponent. On 1-11-1930, the 2nd opponent filed an objection statement opposing the petition -- filed by Mr. Belur Srinivasa Iyengar and -- questioning the right of the 1st opponent to appoint an Arbitrator as well as the legality of the Award said to have been passed by Mr.Belur Srinivasa Iyengar. The 2nd opponent also pleaded that he had already filed Original Suit No.23 of 1929-29 before the Additional District Judge, Bangalore, with the full knowledge and acquiescence of the 1st opponent, that the 1st opponent had no right to constitute a rival tribunal after the court had already seisen of the case, that his conduct in having obtained an Award during the pendency of Original Suit No.23 of 1929-29

and

and without obtaining a stay order as required by law was contumacious and constituted contempt of court, and that the alleged arbitration proceedings and the Award were fraudulent and -- illegal. He also contended that Mr.Belur Srinivasa Iyengar was acting as the 1st opponent's counsel, that he had not withdrawn from the case and that his Vakalat on behalf of the 1st -- opponent was still in force, that it was extremely improper on his part to have accepted the appointment of Arbitrator after the filing of the suit, that there was no deed of submission or any other authority to authorise Mr.Belur Srinivasa Iyengar to act as Arbitrator, that the alleged Award was in favour of his own client (1st opponent), and that it was void and -- in-operative.

On 11-6-1930, Mr.Belur Srinivasa Iyengar also filed a reply statement controverting the objections raised by the 2nd opponent. On -- 30-6-1930, the 1st opponent filed an application accepting the Award passed by the Arbitrator and denying the allegations made by the 2nd opponent. On 26-9-1932, the Court passed a final order affirming the Award and directing that it should be filed. Against the said order, the 2nd -- opponent filed an appeal to this Court in Miscellaneous Appeal No.28 of 1932-33 impleading Mr.Belur Srinivasa Iyengar kept as the 2nd respondent. After hearing arguments on both sides and fully examining every aspect of the case, this Court came to the conclusion that Mr.Belur -

Mr.Belur Srinivasa Iyengar had no legal authority to act as "sole arbitrator", that he was not competent at all to act as an Arbitrator on behalf of the appellant, and that the award said to have been passed by him was illegal and inoperative. The appeal was therefore allowed with costs and the award was set aside.

On the materials before the court, the following findings were recorded in the above appeal:-

"The undisputed facts in the present case go to show that it was on 27-2-1929 that the appellant filed the suit before the lower court in O.S.No.22/28-29. On 12-3-1929 Mr.Belur Srinivasa Iyengar appeared for the 1st respondent, filed a Vakalat on his behalf and obtained an adjournment from the court in order to file a written statement in the said suit. Since an adjournment was obtained by the 1st respondent and his counsel to file a written statement in the above suit, and an application for compensation for wrongful attachment was also filed by the 1st respondent, they must be deemed to be steps in the proceedings within the meaning of Section 19 of the Arbitration Regulation and the arbitrator must be deemed to have become functus officio. Even a verbal prayer to file written statement has been held to be a step in the suit.

The party, who makes any application whatsoever to the court, even though it be merely an application for time, takes a step in the proceedings. In other words, any act in the nature of an -- application to the court which indicates that a party is willing that the suit should proceed, would be a step in the proceedings under -- Section 19.

Halsbury's Laws of England Vol.I,page 630 (second edition).
See also, 34 Calcutta, page 413; 40 Indian Cases, page 81; and 32 Cal.page 453 at page 461.

Under these circumstances, the contention urged by the appellant in his objection statement dated 11-3-1930 and referred to by his -- advocate in the course of his arguments, viz., that it was contumacious on the part of the 1st respondent to have appointed an arbitrator and secured an award after obtaining an adjournment in Original Suit No.22 of 1927-29 to file written statement and while his application for stay in the aforesaid suit was still pending, that the arbitrator cheated the court by applying for time to file a written statement and then allowing himself to be appointed arbitrator and proceeding to give an award which was tantamount to a fraud made with a view to prevent the court from proceeding to decide Original Suit No.22 of 1928-29 on the merits, that he acted improperly by -- assuming the functions of the court and sub ousting its jurisdiction, and that the arbitration and award constituted proceedings in --

contempt of court and were ultra vires and illegal, cannot be said to be without foundation on the other hand, we are of opinion that there is considerable force in the above contentions. It is true that an arbitrator is not tied down to rigid or technical rules of evidence or -- procedure. But he must nevertheless observe the first principles of justice, and he must act in accordance with the principles of justice, equity and good conscience. He ought not to disregard fundamental principles of justice and public policy, and should not decide upon -- grounds which would render his award utterly unfair or worthless. For should he be guilty of a patent error of law or ~~misconduct~~ misconduct.

'Misconduct' is a comprehensive term, and Halsbury says that "it is difficult to give an exhaustive definition of what amounts to misconduct on the part of an arbitrator or umpire. The expression is of wide import, including on ~~the~~ the one hand bribery and corruption and on the other a mere mistake as to the scope of the -- authority conferred by the submission".

Halsbury 's Laws of England Vol.I para 113 at page 677.

See also 17 Indian Cases, page 696.

Mr.Lalur Srinivasa Iyenger obtained an adjournment by making a wilful misrepresentation to the court and subsequently accepted the -- appointment of an arbitrator. While continuing to remain as counsel on behalf of his own client

and without obtaining permission to retire from the case, he constituted a rival tribunal and gave himself jurisdiction in order to prevent the court from deciding Original Suit No.22 of 12222 1927-29. It is not the case of a person, -- appointed arbitrator before the filing of the suit, acting and passing an award after the suit. It is a great deal worse than that. It is the case of an advocate deceiving the court and -- obtaining an adjournment to delay the course of justice and to gain an advantage for his client by means of a trick. He knew that the case was actually pending, that his client was taking -- steps in court, and that a stay order had not been issued. The stay application had been filed on 21-5-1929; and on 13-6-1929 the court framed an issue whether the suit was liable to be stayed, and the case was adjourned to 17-7-1929 and then to 4-9-1929 on which date Mr.Belur Srinivasa Iyengar appeared in court. In the face of all these proceedings, he improperly assumed the -- functions of the court, ousted its jurisdiction and proceeded to arbitration although he had -- absolutely no authority to act on behalf of the appellant and passed an exparte award in favour of his client ignoring the emphatic protests of the appellant. While the 1st respondent is guilty of improperly procuring an award within the meaning of Section 14 of the Arbitration Regulation, -- Mr.Belur Srinivasa Iyengar is equally guilty of -- misconduct and his own action, which is opposed to all fundamental notions of justice and fair-play is really deplorable.

It is settled law that an advocate is an officer of the court and that as such he owes good faith and honourable dealing wt to the courts before which he practises. But in the present instance it is difficult to hold that Mr.Belur Srinivasa Iyengar acted in good faith or that his dealing with the court was honourable. In a very recent Full Bench decision, the Madras High Court have held that a legal practitioner who asks for adjournments on different occasions merely to delay the course of justice with deliberate intention, is guilty of grossly improper conduct, and renders himself liable to punishment Beasly, C.J., has further laid down that it is not the duty of the legal practitioner to follow -- blindly every instruction his client gives. That is an entire misapprehension of the duty of a legal practitioners. He has not only got a duty towards his client but he has got a duty towards the court and it is his duty to see that the case is fairly and honestly conducted. He must not trick or -- deceive the court or attempt to gain for his client an advantage by dishonest means. To attempt to -- obtain adjournments by misrepresentations and to put forward a purpose which the legal practitioner -- knows will never be carried out is to attempt to gain, and to gain an advantage by a trick and a very dishonest one too.

131 Indian Cases, p.145 at pp.146 & 147.

Judged by the above test, we have no hesitation in holding that Mr.Belur Srinivasa Iyengar did not properly realise his responsibilities as an officer of the court, that he failed to appreciate the ugliness of the situation created by himself, and that his conduct is highly unscrupulous and improper.

Regarding the conduct of Mr. Belur Srinivasa Iyengar, a notice was issued to him to show cause why he should not be dealt with under Section 11 cl.(b) of the Mysore Legal Practitioners' Regulation of 1884 (as amended by Regulations I of 1897, XII of 1919 and X of 1928) for fraudulent or grossly improper conduct on his part in the discharge of his professional duty as observed in paras 55 to 59 (both inclusive) of the order in the Miscellaneous Appeal.

"The legal profession like every other has its own code of ethics and the ethics of the Bar are the necessary result of the system of administration of Justice in England and in all the countries which have borrowed that system. The theory underlying the English system is that the best means of finding out the truth between two contending parties is to hear the best that can be said for each side by a skilful advocate and entrust the decision to an impartial judge capable of weighing the arguments on both sides. Necessarily the system involves a division of functions between the Judge and the advocate. It is the business and the duty of the advocate to make the best of his client's case and it is the province of the Court to weigh the contentions in the balance and determine on which side the right lies. It is also the duty of the advocate to conform to the rules of the game, which have been laid down by the traditions of the English Bar, traditions inspired by an eminent love of fair-play and by a deep sense of the duty of the profession to assist in the adminis-

administration of justice."

"Every advocate is an officer of the court. He owes allegiance to the tribunal whose officer he is and his duties to that tribunal are not less important than his duties to his client. If an Advocate will always bear in mind that he is not merely counsel for his client but also a counsellor to the court, he will then be able to realise the important function of co-operating with the Bench in the administration of justice, and his duty to help the court and to avoid any manner of thwarting the court. He is the mouth-piece of his client in the sense that he has to put one side of the case before the court. But it would be a grievous mistake if any advocate thought that he could take shelter under the fact that he is the mouth-piece of his client to justify everything he did or said. He cannot tell the court 'it is my client that says it and I - have no responsibility in saying it' -- a statement of that sort would be absolutely useless. He cannot make foolish and ignorant statements that a client may make. He cannot make dishonest - statements and put the dishonesty to his client's account. Though the representative of his client, he has to remember that he x is a representative belonging to an honourable profession, bound by duties to the court, bound by duties to the - public, bound by the traditions of an honourable profession, and bound not to dwarf his own -

nature

nature by his conduct as a member of the bar."

P.R.Sundara Aiyar's Professional Ethics, pages 52, 57 and 58 and Preface to the same by Sir P.S. Sivaswamy Aiyar - pages ii to iv.

The Advocate, no doubt, "owes entire devotion to the interests of his client, warm zeal in the defence of his rights and the exertion of his utmost learning and ability" in support of his client's cause. "In the judicial forum the client is entitled to the benefit of any and every remedy and defence that is authorised by the law of the land, and he may expect his lawyer to assert every such remedy or defence. But it must always be borne in mind that the great trust of the lawyer is to be performed within and not without the bounds of the law. His office does not permit, much less does it demand of him for any client, violation of law or any manner of fraud. He must obey his own conscience and not that of his client. A lawyer should also use his best efforts to restrain and to prevent his clients from doing those things which the lawyer himself ought not to do".

"The advocate must never attempt to mislead the court himself nor permit his client to do so. There should be no false suggestions; no misrepresentations; no statements made to induce the court to believe that there are no facts beyond what the advocate himself has stated; no

suppression

should the principle also be wholly at variance with sound law it would be dishonourable folly in me to endeavour to incorporate it into the jurisprudence of the country, when if successful it would be a gangrene that might bring death to my cause of the succeeding day."

(2) "When employed to defend those charged with crimes of the deepest dye, and the evidence against them, whether legal or moral, be such as to leave no just doubt of their guilt, I shall not hold myself privileged, much less obliged, to use my endeavours to arrest or to impede the course of justice, by special resorts to ingenuity, to the artifices of eloquence, to appeals to the morbid and fleeting sympathies of weak juries or of temporising courts to my own personal weight or character, nor, finally, to any of the overwhening influences I may possess from popular manners, eminent talents, exalted learning, etc. Persons of atrocious character, who have violated the laws of God and man, are entitled to no such special exertions from any - member of our pure and honourable profession; and indeed, to no intervention beyond securing to them fair and dispassionate investigation of the facts of their cause, and the due application

of

of the law; all that goes beyond this, either in manner or substance, is unprofessional, and proceeds, either from a mistaken view of the relation of clients and counsel, or from some unworthy and selfish motive which sets a higher value on professional display and success than on truth and justice, and the substantial interests of the community. Such an inordinate ambition I shall ever regard as a most dangerous perversion of talents, and a shameful abuse of an exalted station. The parricide or the gratuitous murderer, or other perpetrator of like revolting crimes, has surely no such claim on the commanding talents of a profession whose object and pride should be the - suppression of all vice by the vindication and enforcement of the laws. Those therefore who wrest their proud knowledge from its legitimate purposes to pollute the streams of justice and to screen such foul offenders from merited penalties, should be regarded by all (and certainly shall by me) as ministers at a holy altar full of high pretension and apparent sanctity, but inwardly base, unworthy and hypocritical, dangerous in the precise ratio of their commanding talents and exalted learning".

The Editors of the American Law Review have recorded their high appreciation of his -

eminent

utmost of his power, to seek to reconcile the interests he is bound to maintain, and the duty it is incumbent on him to discharge, with the ~~xarnal~~ eternal/and immutable interests of truth and justice."

The most paramount ethical duty to be realised by the legal profession is that its members are officers of the court charged with the high duty of aiding in the administration of justice, and that "this duty enters into and must be recognised as the dominating factor in the interpretation of any and every obligation of the lawyer towards his clients

It was on the basis of such ethical ground that Lord Mansfield laid down the famous doctrine more than a century ago, after consulting all the judges (in the case of exparte Brounsall (16)), that disciplinary action against an Attorney rests on the principle that after proved misconduct the court deems him an unfit and improper person to act as an Attorney, and that his being struck off the Roll is not by way of punishment but is based on the principle that it is not proper that such a person should continue to be a member of a profession which should stand free from all suspicion.

The same principle was affirmed and restated in re Hill by Cockburn, C.J. as follows :-

"When an attorney does that which involves dishonesty, it is for the interest of

the

the suitors that the court should interpose and prevent a man guilty of such misconduct from acting as attorney of the Court."

Vol. III Q.B.D. page ~~XX~~ 543.

This is the identical principle on which High Courts in India take disciplinary action in cases of misconduct of Legal Practitioners. The Calcutta High Court have pointed out that the object of a court in exercising its disciplinary control is to preserve the purity of the court and the proper and honest administration of the law. The purpose of suspension and disbarment is to protect the court and the public from legal practitioners who, disregarding the sanctity of their office pervert and abuse the privileges annexed to the responsible office they have secured from the court. The test to be applied is whether misconduct is of such a description as shows him to be an unfit or unsafe person to enjoy the privileges of a legal practitioner, in other words, unfit to discharge the duties of his office and unsafe because unworthy of confidence.

I.L.R. 49 Calcutta, page 732 and p.806.

The Bombay High Court have observed as follows :-

"Legal Practitioners belong to a privileged class and they enjoy their privileges with our consent. But just as they enjoy -

special

o far as this court is concerned, it has been laid down in unmistakable terms in the Full Bench decision reported in 36 Mysore High Court Reports, page 229, that Advocates enjoy certain privileges and a certain status and position by virtue of their enrolment, and that this court which is responsible to Government for the character and conduct of such Advocates should exercise the most strict and watchful supervision over their conduct and should not hesitate to disenrole any advocate found guilty of discreditable conduct or of conduct unbecoming his position as an Advocate.

In the present case the Advocate (Mr.Melur Srinivasa Iyengar) filed a statement on 11-9-1933 contending, among other matters, that a preliminary enquiry should be held and that "specific charges with sufficient particularity and precision" should be framed against him, and his counsel relied upon the decision in 9 Mysore Law Journal, page 262, in support of his contention. But it has to be pointed out that a preliminary enquiry is not at all mandatory under the provisions of Section 11 of the Legal Practitioners' Regulation and that the question is left entirely to the discretion of the High Court. It is also well settled that the provisions of either the Civil Procedure Code or the Criminal Procedure Code are inapplicable to proceedings under the Legal Practitioners' Act, and that they are special proceedings resulting from the inherent power of the court over their officers (see C.P. No.52 of 33-34)

and Section 11 of the Legal Practitioners' Regulation does not contemplate the framing of formal charges as in the case of accused persons under the Criminal Procedure Code. Nor is there anything in the 9 Mysore Law Journal case in support of such xpx a proposition. That was a case in which this court started proceedings under the Legal Practitioners' Regulation against an Advocate on the receipt of a reference from the District Magistrate, Bangalore, inviting attention to certain objectionable speeches said to have been made by the Advocate. The facts were not clear and there was nothing to show beyond the reference of the District Magistrate, which was based on a Police report, whether the Advocate had made the speeches and if so in the manner reported by the District Magistrate. Hence, in order to xx ascertain the facts this court considered it desirable to fix up a particular procedure in that case and called upon the Government Advocate to formulate, in the form of charges, what particular passages in the various speeches contained matters which were objectionable within the meaning of Section 13-B of the Legal Practitioners' Regulation. The above observations were applicable only to that particular case and cannot be deemed to refer to any general procedure to be observed in all cases under the Legal Practitioners' Regulation. Each case depends on its own facts and circumstances, and the discretion given to the courts by the statute xxxx cannot be said to have been crystallized by the above observations. Hence, the said observations cannot

be deemed to have been made with the intention of fettering the discretion of other Judges in all cases under the Legal Practitioners' Regulation. In the present case, in which the Advocate himself was a party, the findings have been established by the judicial record, and it is not open to him to ask the court to start another enquiry and arrive at fresh findings on the same facts. Such a claim is xxxx too extravagant and is opposed to the Legal Practitioners' Regulation and to recognised principles of law and justice.

Moreover, the extracts furnished to the Advocate contain distinct findings and charges in unmistakable language (see pages 4 to 8 above) and if they do not, in the opinion of the Advocate, contain specific charges with "sufficient particularity and precision," then the English language must be deemed to have lost all its meaning to the Advocate concerned. It has to be pointed out that proceedings under the Legal Practitioners' Act are as already observed special proceedings resulting from the inherent powers of the courts over their officers. The form of procedure in such cases is not of controlling importance so long as the essentials of fair notice and opportunity to be heard are present. Hence, the court has inherent power to apply such rules of procedure as may ensure a fair trial.

I.L.R. 49 Calcutta,732, at p. 836;
1 Patna Law Journal, page 576,
134 Indian Cases, page 945 (Patna F.B.).

The

The law in America is also the same. It is not necessary that proceedings against attorneys for malpractice, or any unprofessional conduct, should be founded upon formal allegations against them. Such proceedings are often instituted upon information developed in the progress of a cause; or from what the court learns of the conduct of the attorney from his own observation. Sometimes they are moved by third pxx parties upon affidavit; and sometimes they are taken by the court upon its own motion. All that is requisite to their validity is that, when not taken for matters occurring in open court, in the presence of the Judges, notice should to given to the attorney, of the charges made, and opportunity afforded him for explanation and defence. The manner in which the proceeding shall to conducted, so that it be without oppression or unfairness, is a matter of judicial regulation.

Randall vs. Brigham (74 U.S. at page 293).

Again, in the opinion of the Privy Council, all rules of court are nothing but provisions intended to secure the proper administration of justice, and, it is therefore essential that they should be made to serve and be subordinate to that purpose. Rules of procedure are certainly not made for the purpose of hindering justice.

Amrixten (1921) 48 Indian Cases, p.832 at 835;
63 Indian Cases, p.914 (P.C.)
A.I.R.1923 P.C. 126 (74 I.C. p.747).

In an enquiry held on charges of professional misconduct, the Legal Practitioner concerned should be-

be absolutely candid with the court. Absence of straight-forward conduct and setting up of unjustifiable pleas are unmistakable proofs of moral delinquency, and according to the Patna High Court prevarication on the part of the legal practitioner is an aggravating circumstance.

A.I.R. 1930 Patna 493 (F.B.)

It is no doubt true that he is not bound to state any explanation. He may "unwisely decline to render any assistance to the court and maintain a stolid silence and take up the position that the case against him must be completely proved. But if he adopts such an xtf attitude, he obviously runs a grave risk." Because as pointed out by this court in C.P. Nos. 18 of 1931-32 and 28 of 32-33 even when an accused person refuses to answer a question put by the court in a criminal case the court is entitled xs under the law to draw such inference from such refusal as it thinks just. If a legal practitioner elects to state his defence, it ought not to be a perversion of truth in his own interests and in the interests of the honourable profession of which he is a member. In the present case, it is impossible to hold that the legal practitioner is either candid in his defence or that he has not attempted to ~~prevent~~ pervert truth. In para 3 of his written statement he has endeavoured to justify his conduct by stating that he appeared for his client on 12-5-1929 "without any instruction on the merits of the case". If so, it is not clear why he should have appeared at all. He did not report to court, as he

ought to have done, that he was appearing "without instructions on the merits of the case", and there is nothing in the record to support such a theory. Again, he states in the same para that "the case was adjourned to 27-3-1929 for written statement", suggesting thereby that it was perhaps the judge who 'adjourned the case". Without taking the responsibility of stating that he himself did not obtain an adjournment from the court to file written statement, he wants to make a suggestion to that effect by saying that "the case was adjourned". It is proved that from the judicial record that he obtained an adjournment on the said date for filing written statement, and the correctness of this finding has not been disputed. On the other hand, it is confirmed by what the legal practitioner himself has stated in para 8 of his Reply statement (at page 9 of the typed book) in which he admits that he had been instructed by his client to have the case adjourned.

Again, in para 4 of the explanation he denies having appeared for his client on 4-9-1929 in C.S.No. 22 of 1928-29, and suggests that the District Judge has made an incorrect record in the proceedings. This is a charge against the District Judge and the legal practitioner has made no attempt to substantiate it. While the appearance of the legal practitioner on 4-9-29 has been noted by the District Judge in his own handwriting, the legal practitioner denies his appearance, and his denial is neither supported by the record nor proved by any independent evidence. Both on principle and authority it is the record made by the presiding judge that is conclusive on the point, and not what the legal practitioner has stated after 4 years in his explanation.

See (1) King vs. Grant, 5 B & A.D. 1081;
(2) Gibbs vs. Pike, 9 M & W. 351;
(3) Queen vs. Aaron Mellor in Law Journal, Vol.27, 121 at p.131.
(4) 10 Bom. H.C.Reports 75 at p.81:

5) 38 Calcutta Law Journal, p. 411;
(6) 21 Calcutta Law Journal, p. 377 at p.391.

Moreover, there is a legal presumption in favour of the correctness of the record made by the Judge in the judicial record under the provisions of section 114 of the Evidence Act. The rule embodied in illustration (e) under this section is only a particular application of the general maxim "omnia presumuntur rite esse acta", and hence the District Judge must be held to have correctly recorded the legal practitioner's appearance on 4-9-1929 and it may be observed that there is not even an iota of evidence to suggest to the contrary.

Again, in para 8 of his explanation the legal practitioner states that "the petitioner is informed that their Honours did not wish to hear him".

This seems to suggest that his advocate wanted to address arguments and that we did not wish to hear him, and this charge is not supported by the records. On the other hand, we ourselves called upon Mr. L... Raju, who argued the case on two dates (on 4-7-1933 and 6-7-1933), to state whether he could could justify the conduct of Mr. Belur Srinivasa Iyengar in having obtained an adjournment to file written statement and then proceeded to give an award. Mr. L.S. Raju gave us the following reply on 6-7-1933.-

"This is a question of law and it is for the court to decide", and these words are quoted from the notes which we took down at the time

of arguments.

We heard everything what both sides had to state, as can be seen from the detailed notes of arguments preserved in the record, and gave our best attention to the said arguments, and we fail to see why we should have refused to hear Mr. Belur Srinivasa Iyengar's Counsel if he really wanted to say anything on the subject. On the other hand what Mr. Belur Srinivasa Iyengar himself has stated in the same para of his explanation also seems to disprove his allegation. He says that his counsel "had been instructed to leave the matter entirely in the hands of the Hon'ble Court." This clearly shows that his counsel had no instructions to argue the case on his behalf.

It is thus clear that the conduct of the legal practitioner before this Court is not characterised by candour or fairness. His attempt at explanation has made matters worse and we feel ourselves unable to accept the belated apology tendered by him. To accept it would be, to use the words of Mr. Justice Wills of the Allahabad High Court, "a stretch of charity which would degenerate into absurd and ridiculous weakness." In the savage case reported in I R.99, P.228, an English Barrister was disbarred for having obtained his call to the Bar by misrepresentation and

surprise.

surprise. According to American law -- professional misconduct consists in attempting by any means to practise a fraud or impose upon or decive the court, the adverse party or his counsel; and in fact in any conduct which tends to bring reproach upon the legal -- profession or to alienate the favourable opinion which the public should entertain regard ing it.

Corpus Juris, VI, pp.588 and 589.

As already was pointed out, the Madras High Court have laid down in a Full Bench - decision that if a legal practitioner, -- deliberately for the purpose of impeding the course of justice, makes statement to a court which he knows or believes to be untrue and thereby gains an advantage for his client, just as Mr. Belur Srinivasa Iyengar is found to have done in the present case, he is guilty of - grossly improper conduct and renders himself liable to be dealt with by the High Court.

A.I.R. 1931, page 422
=54 Madras, p.520 (F.B).

The legal profession is a noble one, and it is desirable that no member of it should by his conduct do anything to lower its high - standard of morality, probity or honesty. All that has to be proved to establish misconduct is misbehaviour as would justify removal or suspension. (A.I.R. 1933 Sind, p.65). and it

is not necessary that an act of misconduct should possess all the necessary ingredients of a "crime" as understood under the Criminal Law. As recently pointed out by this Court in C.P. No.52 of 1933-34 it is well settled that morality cannot be divorced from the practice of the law. An advocate is not merely a lawyer but also a moral agent. As such moral agent, he is a judge of right and wrong, and an advocate of what is right. He should do nothing which will in any way be unbecoming as a member of the public or as a loyal citizen of the State. Nor should he do anything which is calculated to diminish his own self-respect or dwarf his own soul. The professional misconduct of a legal practitioner is a matter of public importance, and the High Court has a duty to perform to the suitors and to the legal profession, and is bound to see that suitors are not exposed to improper persons and that the persons admitted to the said profession are persons on whose integrity and honour reliance may be placed and their conduct is such as to inspire confidence in their character.

In the present case, Mr. Belur Srinivasa Iyengar has not shown that our findings are in any way untenable and we find him guilty of all charges. By deceiving the court he obtained an adjournment to delay the course of justice and to gain an advantage for his client by dishonest means. While continuing to remain as counsel on behalf of his own client and fully

knowing

knowing that the case was still pending in - court, he improperly gave himself jurisdiction and prevented the court from proceeding to decide O.S. No.22/28-29 on the merits, and - helped his client to improperly procure and award within the meaning of Section 14 of the Arbitration Regulation. Every one of the charges proves his gross professional misconduct, and judged by the tests laid down - since the time of Lord Mansfield and approved and followed in America as well as by all the High Courts in India, his conduct with respect to each act is highly unscrupulous and -- improper.

We were inclined to take very severe notice of the misconduct of Mr. Belur Srinivasa Iyengar, but on further consideration we are of opinion that the ends of justice will be sufficiently met by suspending him from all practice for one year, and we order accordingly.

Sd/ P. Sadasivayya
CHIEF JUSTICE.

Sd/- K. Shantaramayya Rao
J U D G E.

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Deputy Registrar

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